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NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 905

[NCPPC 109]

Qualification Requirements for Participation in the National Fingerprint File Program

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council (Council), established pursuant to the National Crime Prevention and Privacy Compact (Compact) Act of 1998, is publishing a proposed rule requiring a Compact Party to meet minimum qualification standards while participating in the National Fingerprint File (NFF) Program.

DATE: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625-5388. ~~or by electronic mail at tcommodo@leo.gov.~~ To ensure proper handling, please reference "NFF Program Qualification Requirements Docket No. 109" on your correspondence. You may view an electronic version of this proposed rule at www.regulations.gov. You may also comment via electronic mail at tcommodo@leo.gov or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include NCPPC Docket No. 109 in the subject box.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, P. O. Box 1489, Tallahassee, FL 32302, telephone number (850) 410-7100.

SUPPLEMENTARY INFORMATION:

This proposed rule requires all Compact Parties to comply with minimum qualification standards while participating in the NFF Program. The standards entitled "National Fingerprint File Qualification Requirements" are published in the Notices section of today's Federal Register; hereafter, interested parties should acquire a copy of the most current NFF Qualification Requirements by contacting the Compact Council Office at the address shown above.

Background

Compact Article VI establishes a Council which has "the authority to promulgate rules and procedures governing the use of the FBI's Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with the FBI administration of the III System for criminal justice purposes." The Council believes the promulgation of this rule and its accompanying notice will clarify for current and future NFF Program participants the requirements by which a participant's NFF performance will be measured. The notice related to this proposed rule contains two sets of Qualification Requirements - one applicable to State NFF participants and an analogous set for the FBI's NFF participation. The following paragraphs provide justification for both State and FBI participation in the NFF.

Party State NFF Participation

Compact Article III outlines the responsibilities of the Compact Parties. Article III(b)(3) provides that each Compact Party State shall participate in the NFF. See 42 U.S.C. 14616, Article III. The Compact does not set out a time line for NFF participation; to date, six Compact Party States participate in the NFF, while an additional ~~eight~~ nine are in various stages of preparation to join the NFF Program. The FBI Criminal Justice Information Services (CJIS) Division's staff provides training and guidance to criminal history record repository staff as the State prepares for NFF participation.

The CJIS Audit staff will measure a State's performance in the NFF Program using audit criteria that align with the State NFF Qualification Requirements. The Council will

publish a proposed rule establishing sanctions for noncompliance with its rules, procedures, and standards for the noncriminal justice use of the III System. The sanctions process outlined therein will be used by the Council to address noncompliance findings related to the noncriminal justice use of III, while noncompliance findings related to the criminal justice use of III will continue to be handled by the CJIS Advisory Policy Board (APB).

FBI NFF Participation

The FBI CJIS Division (~~previously the Identification Division~~) has maintained the NFF since its inception in 1991 as a pilot project. The CJIS Division remains an integral part of the NFF Program which, when fully implemented, will result in a national decentralized criminal history record system. Article II of the Compact requires the FBI to, among other things, permit use of the National Identification Index and the NFF by each Party State. Article II also establishes an obligation for all Compact Parties to adhere to the Compact and the Compact Council's related rules, procedures, and standards.

Compact Article III requires the FBI Director-appointed Compact Officer to ensure the Department of Justice and other agencies and organizations that submit criminal history search requests to the FBI comply with the provisions of the Compact and with the Council's rules, procedures, and standards governing the use the III System for noncriminal justice purposes. Audit reports of the FBI's criminal history record repository will be provided to the Council, which will use the results to ensure CJIS Division compliance with the FBI NFF Qualification Requirements. (The FBI and its CJIS APB maintain purview over the criminal justice use of the III system. The APB has endorsed the referenced NFF Qualification Requirements and will be consulted in any future revisions.)

Administrative Procedures and Executive Orders

Administrative Procedures Act

The Compact Council, composed of 15 members including 11 state and local governmental representatives, is authorized to promulgate rules, procedures, and standards for the effective and proper use of the III System for noncriminal justice purposes. The Compact Council is publishing this rule in compliance with the mandate that rules, procedures, or standards established by the Council be published in the Federal Register. See 42 U.S.C. 14616, Articles II(4), VI(a)(1), and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (~~Title 5~~, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 905

Crime, Privacy, Information, Safety

Accordingly, ~~Title~~ 28 of the Code of Federal Regulations is amended by adding Part 905 to read as follows:

Part 905—NATIONAL FINGERPRINT FILE (NFF) PROGRAM

QUALIFICATION REQUIREMENTS

Sec.

905.1 Purpose and authority.

905.2 Participation in the NFF Program

Authority: 42 U.S.C. 14616.

§905.1 Purpose and authority.

The purpose of this part 905 is to require each NFF participant to meet the standards set forth in the NFF Qualification Requirements as established by the Compact Council (Council). The Council is established pursuant to the National Crime Prevention and Privacy Compact Act (Compact), ~~Title 42, U.S.C., Chapter 140, Subchapter II,~~ ~~Section~~ § 14616.

§ 905.2 Participation in the NFF

Each NFF Program participant shall meet the standards set forth in the NFF Qualification Requirements as established by the Council and endorsed by the FBI's Criminal Justice Information Services Advisory Policy Board. Each participant's performance will be audited and measured by criteria designed to assess compliance with those requirements.

Dated: _____

Donna M. Uzzell,
Compact Council Chairman